

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

Kendra Mitchek,)	
An Individual,)	
)	
Plaintiff)	
)	
v.)	Case No. CIV-15-1340-F
)	
Nestle Purina Petcare Company)	
A foreign corporation)	
)	
Defendant.)	

COMPLAINT

Comes Now, Plaintiff, Kendra Mitchek, by and through counsel and for her causes of action states as follows:

1. At all material times, Plaintiff, Kendra Mitchek, has been a resident of the State of Oklahoma within the venue of this Court.
2. At all material times, Nestle Purina Petcare Company ("NPPC") has been a Missouri corporation doing business within the venue of this Court.
3. Plaintiff was employed by Defendant at its pet food operation at 13900 N. Lincoln, Edmond Oklahoma. At the time of the events material hereto Plaintiff was a bulk unloader.
4. On or about July 23, 2014, NPPC terminated the employment of Plaintiff. The proffered explanation was that she had caused a spill of a phosphoric acid, about 10 gallons. This explanation is pretextual and false.

5. Plaintiff is a female. Prior to her termination she engaged in protected activity of complaining about gender discrimination against her, and encouraging other women, to make such complaints.
6. On or about July 24, 2013, Plaintiff complained to her supervisor that he was requiring her to perform duties that were considered to be unsafe. During the event, Plaintiff reported to the supervisor that she was going to sue him for gender discrimination. Plaintiff's statement was made in good faith. Plaintiff's statement is protected opposition to gender discrimination. On or about August 6, 2013, Plaintiff was issued a formal disciplinary Final Written Warning for her statement regarding filing a lawsuit.
7. During the term and tenure of her employment, Plaintiff was treated differently than males. On or about May 31, 2014, a switch was broken while Plaintiff and male co-workers were moving railroad cars on Defendant's premises. On July 2, 2014, Plaintiff was issued a second Final Written Warning. However, males that damaged the same switch, and other company property, were not issued such disciplinary notices.
8. On or about July 3, 2014, a supervisor at Defendant's Edmond Plant, acting within the scope of his employment or conduct which naturally arose from his employment status, assaulted and battered a female employee by forcefully grabbing and jerking her. Such was with significant force, causing pain. Plaintiff encouraged and convinced the female employee to report the assault to the police and to file a harassment complaint with Defendant against the supervisor. On or about July 3, 2014, the female co-worker did report the assault to the police, which investigated the assault and battery at Defendant's facility. The female co-worker also reported gender harassment against the supervisor to Defendant's Human Resources department in Edmond.

9. Defendant was informed on or about July 3, 2014, that Plaintiff had encouraged the female co-worker to report the assault to the police and to make a sexual harassment complaint.
10. On or about July 1, 2014, while Plaintiff was performing her normal job functions, a small amount of phosphorus acid spilled from a tanker truck, which was being pumped into Defendant's facility. Despite male coworkers causing the spill, and males causing other spills and similar damages, Plaintiff was disparately terminated on July 23, 2014, only 20 days after her protected conduct.

Count 1: Retaliatory Discharge

11. All other paragraphs are incorporated herein.
12. Defendant is an employer having more than 15 employees.
13. Prior to July 23, 2014, Plaintiff opposed discrimination based on protected status, including her gender, and gender discrimination against co-workers, and by threatening to file a gender discrimination lawsuit. Plaintiff engaged in protected opposition to unlawful employment practices under the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-3
14. Defendant was aware of her opposition to discriminatory and retaliatory unlawful employment practices.
15. Plaintiff suffered tangible adverse employment action as a result of her protected opposition. Defendant terminated Plaintiff in retaliation for her opposition to unlawful employment practices.

16. There is a causal connection between the protected opposition and the adverse employment action, including disparate treatment, failure to follow defendant's policies in termination, and use of pretextual reasons for termination.
17. But for her protected activity, Plaintiff would not have been fired.

Count 2: Gender Discrimination

18. All prior paragraphs are incorporated herein.
19. Defendant is an employer, having more than 15 employees.
20. During the scope and course of her employment, as described above, Plaintiff was subjected to a discrimination and disparate treatment because of her gender. Plaintiff was disciplined and terminated for conduct for which males were not. Defendant's conduct was severe, pervasive, and altered the terms and conditions of Plaintiff's employment.
21. Plaintiff was disciplined and terminated because of her gender
22. Defendant failed to promulgate, train employees in, or effectively implement any policy against gender discrimination.
23. Defendants conduct, described above, is gender discrimination within the contours of 42 USC § 2000e, et seq.

Count 3: Public Policy Wrongful Discharge

24. All prior paragraphs are incorporated herein.
25. Defendant's termination of Plaintiff violated the dominate and well-defined public policy of the State of Oklahoma. The well-defined and dominate public policy of the State of Oklahoma includes, without limitation, the right to be free of physical assault and battery in the work place; the right to a safe working environment.

26. Oklahoma public policy further protects employees reporting of criminal acts perpetrated by Defendant's employees against Plaintiff for assault and battery. 23 O.S. § 3¹ Supervisor and co-worker assaults and batteries on employees affects the health and safety of employees. Such Assaults and batteries are criminal acts. Plaintiff's termination in retaliation for encouraging the reporting and complaining about such assaults and batteries by supervisors against employees they supervise violates Oklahoma public policy.

Damages

27. The acts and conduct of Defendant, described above, were malicious, spiteful, and in willful and reckless disregard for the legal rights of another.

28. Defendant at all material times had in excess of 500 employees.

29. On or about May 19, 2015, Plaintiff timely filed her charge of discrimination and retaliation with the EEOC; Charge No. 564-2015-01001. Plaintiff files this action within 90 days of her receipt of the September 10, 2015 Notice of Right to Sue.

30. The acts and conduct of Defendant, described above, are the proximate cause of compensatory damage to Plaintiff, including loss of earnings and benefits, out of pocket costs otherwise covered by insurance, loss of earning capacity, emotional distress, pain of mind and body, all in an amount in excess of \$75,000.00, excluding costs, fees, and interest.

Wherefore, Plaintiff prays that judgment be rendered in her favor and against Defendant in an amount in excess of \$75,000.00, together with back-pay, interest, costs, expenses, attorney fees, reinstatement or front pay as appropriate, and any and all other legal or equitable relief to which she is entitled.

Jury Trial Demanded

Attorney Lien Claimed

Respectfully Submitted,

¹ Without limitation, see *Burk v. K-Mart Corp.*, 770 P.2d 24 (Okla. 1989), favorably citing, *Palmateer v. International Harvester Co.*, 85 Ill. 2d 124, 421 N.E. 2d 876, 52 Ill. Dec. 13 (Ill. 1981); and *Turner v. Reynolds Ford, Inc.*, 1998 U.S. App. LEXIS 9552 (10th Cir. 1998) (unpublished).

s/Loren Gibson

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